

amount of depreciation with respect to such plant in the first ratemaking proceeding in which such depreciation was treated as a cost of service.

(8) *Limitation on payments to a nuclear decommissioning fund*—(i) The limitation on payments to a nuclear decommissioning fund (see section 468A(b) and paragraph (b) of § 1.468A-2) for a taxable year that ends on or after July 18, 1984, and begin before January 1, 1987, shall be determined under paragraph (b)(8)(ii) of this section if—

(A) The electing taxpayer receives a ruling amount applicable to such taxable year after the deemed payment deadline date for such taxable year; and

(B) The requirements of paragraph (b)(8)(iii) of this section are satisfied.

(ii) If the limitation on payments to a nuclear decommissioning fund for a taxable year is determined under this paragraph (b)(8)(ii), the maximum amount of payments made (or deemed made) to the nuclear decommissioning fund during such taxable year shall not exceed the sum of—

(A) The amount determined under section 468A(b) and paragraph (b) of § 1.468A-2 (*i.e.*, the lesser of the cost of service amount or the ruling amount) after application of the transitional rules contained in paragraph (b)(4), (5), (6) and (7) of this section; and

(B) The amount of after-tax earnings that would have accumulated to the date of actual payment to the nuclear decommissioning fund if the amount described in paragraph (b)(8)(ii)(A) of this section had been contributed to the nuclear decommissioning fund on the deemed payment deadline date for such taxable year.

In determining the after-tax earnings that would have accumulated to the date of payment, an electing taxpayer must use the after-tax rate of return of the nuclear decommissioning fund that was used in determining the initial schedule of ruling amounts.

(iii) In order to compute the payment limitation under paragraph (b)(8)(ii) of this section for any taxable year, an electing taxpayer must—

(A) Indicate on the Election Statement for the taxable year that the amount of the deductible payment is greater than the amount determined

under section 468A(b) and paragraph (b) of § 1.468A-2 because paragraph (b)(8) of § 1.468A-8 applies;

(B) Not have claimed a deduction for the taxable year under section 468A(a) or paragraph (a) of § 1.468A-2 on any return that is filed before the date that a ruling amount is received for the taxable year;

(C) Not have taken a deduction under section 468A (a) or paragraph (a) of § 1.468A-2 into account in determining the amount properly estimated as tax for the taxable year under section 6081 (b) (relating to the automatic extension for filing corporate income tax returns); and

(D) Not take the deduction allowed with respect to such payment into account in determining the amount of any overpayment of tax (within the meaning of section 6611) or underpayment of tax (within the meaning of section 6601) for the period ending on the date of such payment (see paragraph (b)(9) of this section).

(iv) The following example illustrates the application of the principles of paragraph (b)(8) of this section:

Example. X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X. On September 15, 1987, X receives a schedule of ruling amounts from the Internal Revenue Service that includes a ruling amount of \$1,000,000 for the 1986 taxable year. For purposes of this example, assume that the cost of service amount applicable to the nuclear decommissioning fund for the 1986 taxable year is also \$1,000,000 and that the after-tax rate of return of the nuclear decommissioning fund that was used in determining the schedule of ruling amounts is 10 percent compounded semi-annually. On September 15, 1987, X makes a contribution of \$1,050,000 to a nuclear decommissioning fund established by X. Under paragraph (b)(8)(ii) of this section, this contribution does not exceed the limitation on payments for the 1986 taxable year and the entire amount of the contribution is deductible for such year. The additional \$50,000 deductible payment that is allowed under this paragraph (b)(8) reflects the foregone earnings of the fund for the six-month period beginning on the deemed payment deadline date for the 1986 taxable year (March 15, 1987) and ending on the date of the contribution (September 15, 1987).

(9) *Denial of interest on overpayment.* If a deduction is allowed by reason of paragraph (b)(2) of this section for the

amount of any payment made after the 15th day of the third calendar month after the close of the taxable year to which such payment relates, such deduction shall not be taken into account in determining the amount of any overpayment of tax (within the meaning of section 6611) or underpayment of tax (within the meaning of section 6601) for the period ending on the date of such payment.

(10) *Determination of addition to tax for failure to pay estimated tax.* In the case of any taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, the tax shown on the return for such taxable year for purposes of section 6655(b) shall equal the tax that would be shown on the return if a deduction were allowed for the lesser of—

(i) The amount of the payment made to the nuclear decommissioning fund for such taxable year; or

(ii) The amount determined under section 468A(b) and paragraph (b) of § 1.468A-2 (*i.e.*, the lesser of the cost of service amount or the ruling amount) after application of the transitional rules contained in paragraph (b)(4), (5), (6) and (7) of this section but without regard to the transitional rule contained in paragraph (b)(8) of this section.

(11) *Nuclear decommissioning fund qualification requirements.* For tax years beginning prior to January 1, 1995, the Service will not assert that an unincorporated organization referred to in § 1.468A-5(a)(1)(iv), established prior to January 1, 1993, through which the assets of a nuclear decommissioning fund are invested, is an association taxable as a corporation for federal tax purposes.

[T.D. 8184, 53 FR 6818, Mar. 3, 1988; 53 FR 9276, Mar. 24, 1988, as amended by T.D. 8461, 57 FR 62200, Dec. 30, 1992]

§ 1.468B Designated settlement funds.

A designated settlement fund, as defined in section 468B(d)(2), is taxed in the manner described in § 1.468B-2. The rules for transferors to a qualified settlement fund described in § 1.468B-3 apply to transferors to a designated settlement fund. Similarly, the rules for claimants of a qualified settlement fund described in § 1.468B-4 apply to

claimants of a designated settlement fund. A fund, account, or trust that does not qualify as a designated settlement fund is, however, a qualified settlement fund if it meets the requirements of a qualified settlement fund described in § 1.468B-1.

[T.D. 8459, 57 FR 60988, Dec. 23, 1992]

§ 1.468B-0 Table of contents.

This section contains a listing of the headings of §§ 1.468B-1 through 1.468B-5.

§ 1.468B-1 Qualified settlement funds.

- (a) In general.
- (b) Coordination with other entity classifications.
- (c) Requirements.
- (d) Definitions.
 - (1) Transferor.
 - (2) Related person.
- (e) Governmental order or approval requirement.
 - (1) In general.
 - (2) Arbitration panels.
 - (f) Resolve or satisfy requirement.
 - (1) Liabilities to provide property or services.
 - (2) CERCLA liabilities.
 - (g) Excluded liabilities.
 - (h) Segregation requirement.
 - (1) In general.
 - (2) Classification of fund established to resolve or satisfy allowable and non-allowable claims.
 - (i) [Reserved]
 - (j) Classification of fund prior to satisfaction of requirements in paragraph (c) of this section.
 - (1) In general.
 - (2) Relation-back rule.
 - (i) In general.
 - (ii) Relation-back election.
 - (k) Examples.

§ 1.468B-2 Taxation of qualified settlement funds and related administrative requirements.

- (a) In general.
- (b) Modified gross income.
- (c) Partnership interests held by a qualified settlement fund on February 14, 1992.
 - (1) In general.
 - (2) Limitation on changes in partnership agreements and capital contributions.
 - (d) Distributions to transferors and claimants.
 - (e) Basis of property transferred to a qualified settlement fund.
 - (f) Distribution of property.
 - (g) Other taxes.
 - (h) Denial of credits against tax.
 - (i) [Reserved]
 - (j) Taxable year and accounting method.
 - (k) Treatment as corporation for purposes of subtitle F.